Filed 6/23/16 P. v. Blancarte CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH JIMMY BLANCARTE, Defendant and Appellant.	G052222 (Super. Ct. No. BAF1100205) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on June 3, 2016, be modified as follows:

After the third paragraph on page 17, add the following new subpart under part II of the Discussion section:

C. *Section 1109(a)(1)*

> Because Dorothy's testimony of prior acts of violence was admissible under section 1101(b) to show intent, we need not address Blancarte's argument that evidence was inadmissible under section 1109(a)(1) to show propensity. To the extent

Dorothy's testimony was inadmissible under section 1109(a)(1), any error in admitting the evidence was harmless for the reasons given above.

Blancarte has challenged Evidence Code section 1109 on the ground it violates due process. We agree with those cases that conclude section 1109 does not violate the due process clauses of the United States Constitution and the California Constitution. (See, e.g., *People v. Johnson* (2010) 185 Cal.App.4th 520, 529; *People v. Cabrera* (2007) 152 Cal.App.4th 695, 703-704; *People v. Price* (2004) 120 Cal.App.4th 224, 240.)

This modification does not effect a change in judgment. The petition for rehearing is DENIED.

FYBEL, J.

I CONCUR:

RYLAARSDAM, ACTING P. J.

Filed 6/3/16 P. v. Blancarte CA4/3 (unmodified version)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSEPH JIMMY BLANCARTE, Defendant and Appellant.	G052222 (Super. Ct. No. BAF1100205) O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Jerome E. Brock, Judge. (Retired judge of the Santa Clara Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Laura G. Schaefer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

A jury convicted Joseph Jimmy Blancarte of the first degree murder of Mary Ann Sanchez (Pen. Code, § 187, subd. (a)), as charged in count 1 of the second amended information, and found true the special circumstance allegation the murder was intentional and involved the infliction of torture (*id.*, § 190.2, subd. (a)(18). The jury acquitted Blancarte of attempted rape, as charged in count 2, but convicted him of the lesser included offense of battery. The jury convicted Blancarte of torture (*id.*, § 206), as charged in count 3.

In a bifurcated proceeding, the trial court found true the prior conviction allegations (Pen. Code, § 667.5, subd. (b)). The trial court sentenced Blancarte to a term of life without the possibility of parole on count 1, a term of seven years to life on count 3 (with execution of sentence stayed pursuant to Penal Code section 654), and a consecutive term of two years for the prior convictions. Sentence on count 2 was suspended.

We affirm. We conclude (1) any error in the admission of a police interview was harmless beyond a reasonable doubt; (2) the trial court did not err by permitting Blancarte's former girlfriend to testify about prior acts of uncharged violence, and any error was harmless; (3) there was no cumulative error; and (4) the trial court did not err by denying Blancarte's motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

FACTS

I.

Blancarte Threatens Sanchez.

In early 2011, Manuel Marquez lived with Mary Ann Sanchez in a home called the "rock house" in Cabazon. Marquez and Sanchez were engaged and planned to marry in the fall. They lived in the rock house rent-free in exchange for Marquez taking

care of security and maintenance of the property. Next to the rock house was a vacant lot where alcoholics would gather to drink, talk, and have sex.

Marquez and Sanchez were alcoholics. Marquez had known Sanchez for 27 years and Blancarte for less than 18 months. Blancarte was in love with Sanchez and wanted to make her his girlfriend. Blancarte had told Marquez that he loved Sanchez and was "going to have her no matter what." Blancarte had also told Marquez that he "wouldn't let anybody have her but himself." When Blancarte saw Sanchez with other men, he would become jealous and get belligerent. Sanchez would "party[]" with Blancarte and give him friendly kisses, but had no romantic feelings for him.

In February 2011, Sanchez, who was crying, walked into the rock house and told Marquez not to let Blancarte in if he came on the property. Sanchez said she did not want to talk to or see Blancarte ever again. Blancarte, who was outside, pounded on the door, using a rock, and shouted that if Sanchez did not come out he would kill her. Blancarte called Sanchez a "bitch," a "whore," and a "slut," and threatened to bash her head with the rock. Marquez stepped outside and told Blancarte to leave. A sheriff's deputy arrived and arrested Blancarte. The deputy noticed that Blancarte smelled of alcohol, his eyes were bloodshot and watery, his speech was slurred, and he could not stand.

II.

Sanchez Is Found Abandoned and Restrained.

In late March 2011, Marquez went to stay with a friend for a week. Sanchez was supposed to join him, but she never arrived. Marquez returned to the rock house on the early morning of April 4. He wanted to make sure nobody had broken into the house or yard, so he first went to the alley behind the rock house to check a chain-link fence that ran the entire length of the alley. As he walked down the alley, he saw Sanchez's body in some bushes near a shed. Sanchez was naked and lying facedown. Her arms and legs had been pulled behind her back with her wrists and ankles tied

together. She was gagged and blindfolded and had extensive bruising on her body and face. Marquez did not immediately recognize her.

After determining that Sanchez was still alive, Marquez went to a nearby store and dialed 911. Sheriff's deputies soon arrived at the lot. Marquez led them to Sanchez. Her head was wrapped in a blue jacket and she was unresponsive. A deputy cut the cord binding her ankles and wrists together to relieve the pressure. The cords had been bound so tightly that they left indentations on Sanchez's wrists and ankles. Sanchez had extensive bruising on her face and body and her mouth was stuffed with dirt and leaves. The area was strewn with trash, indicating it had been frequented by other people.

Sanchez was taken to a hospital. Her body temperature was "[v]ery, very cold"—83 degrees. She must have been exposed to the elements for several hours to several days for her body temperature to be that low. The treating physicians observed bruising around her left eye and on her neck, chest, thighs, and groin. She had suffered head trauma causing bleeding in her brain that required her to undergo brain surgery. The brain bleeding happened two or so days earlier. Sanchez had gangrene in both feet caused by the binding, and, ultimately, her right foot and part of her left foot had to be amputated. She had neck compression suggesting a blow to the neck or strangulation.

Sanchez's blood alcohol level was 0.029 percent, a relatively low level for a chronic alcohol user. This suggested that, had Sanchez been drunk to the point of intoxication and then exposed to the elements in the manner she was, her body would have been burning alcohol for two to three days.

DNA testing was conducted of a shoelace used to bind Sanchez's wrists and Sanchez's fingernail scrapings. Blancarte was a minor contributor to the DNA from the shoelace, meaning he could not be excluded as a contributor. Marquez was excluded as a contributor. Blancarte was a possible contributor to the DNA from the fingernail

scrapings, and "the probability of a randomly selected, unrelated individual having be[en] included as a contributor was less than one in seven billion."

Sanchez died one month after arriving at the hospital. The cause of death was "homicidal violence, including blunt force injury to the head." Neck compression and strangulation, as well as hypothermia, were contributing causes of death.

III.

Blancarte Appears with a Scratched Face and Says He "Did Something Bad."

On the morning of April 2, 2011, Anthony Rodriguez (Blancarte's stepbrother) saw Blancarte and Sanchez together at a bus stop. That night, Blancarte showed up alone at Rodriguez's house. He had scratches on his face, which Rodriguez had not seen that morning, and some blood on his shirt and jacket. Blancarte slept overnight in Rodriguez's backyard.

The next day, Rodriguez got a call from Blancarte, who asked for a ride to his aunt's house in Cherry Valley. On the way to the aunt's house, Blancarte told Rodriguez's son, "[i]f I don't come back, you can have my bike." Rodriguez asked Blancarte why he said that. Blancarte said he might go away for awhile, probably to Modesto, because "he needed to get away." Rodriguez asked Blancarte, "was everything okay with him and [Sanchez]." Blancarte shrugged. Rodriguez asked Blancarte if he had done something—specifically, if he had raped Sanchez. Blancarte again shrugged.

Rodriguez dropped off Blancarte at his aunt's home in Cherry Valley on April 3. His cousin, Carol Nieblas, noticed Blancarte had scratches on his face and a bite mark on his arm. She described him as looking "pretty fucked up." Blancarte said he "did something bad" and was "in trouble." Nieblas asked him what he had done. Blancarte replied, "[o]h, I don't know. I can't talk to you about it."

On April 4, 2011, a detective contacted Rodriguez and asked him where Blancarte was. Rodriguez called Blancarte and said a detective wanted to talk with him

about Sanchez. Blancarte asked Rodriguez if she was dead. Rodriguez contacted the detective and learned Sanchez was still alive. Blancarte agreed to meet with the detective at a store in Cabazon, but never showed up.

IV.

Blancarte Turns Himself in.

On the morning of April 6, 2011, Modesto Police Officer David Rhea encountered Blancarte at a bus station. Blancarte said he was waiting for a Greyhound bus. An hour later, Rhea saw Blancarte standing with his head resting on the hood of a police patrol car and his hands behind his back. Blancarte said to Rhea, "I surrender." Rhea contacted dispatch and learned Blancarte was wanted in Riverside County for attempted murder and rape with great bodily injury.

Rhea took Blancarte into custody without incident. On the drive to the jail, Blancarte said he did a very bad thing and wanted to go to a state mental hospital "to get his head fixed." He rambled on about having beat up his girlfriend and said he wanted to see her again. During intake at the jail, Blancarte claimed the scratches on his arm were from a fight he had been in several days earlier and said he had fled Riverside County after assaulting his girlfriend. He was concerned that if he went to jail, the inmates would kill him for what he had done.

V.

Police Officers Interview Blancarte on April 6, 2011.

Two Riverside County Sheriff's investigators drove to Modesto and interviewed Blancarte on April 6, 2011 (the April 6 interview), the day on which he was arrested. The interview was recorded and transcribed. In a long and rambling statement, Blancarte told the investigators that he was with Sanchez in the late afternoon and evening of April 2, 2011. They got drunk and continued to drink together at a spot near the bus stop called "the rock." They got on the last bus at 4:30 p.m.

When Blancarte and Sanchez got off the bus, Sanchez saw "Matt" and called out to him. She tried to follow Matt but he kept walking, and she fell. She got up and started to walk toward the rock house but fell again in the alley. She parted the chain-link fence and went into the vacant lot. Blancarte stayed with her for about an hour. Blancarte tried to have sexual intercourse with Sanchez, but she changed her mind. Blancarte became angry and they argued. They got into a fight. Sanchez hit, scratched, and bit Blancarte. He punched her, leaving her with two black eyes. Blancarte got on his bicycle and left her at about 8:30 p.m.

Blancarte's brother called to tell him Marquez had found Sanchez naked and tied to a tree. Blancarte wanted to apologize to Sanchez for hitting her in the face.

Blancarte denied tying up and leaving Sanchez and claimed he did not inflict any of her injuries except for the black eyes. He said that Sanchez was clothed and conscious when he left her. When asked who would tie up Sanchez and leave her, Blancarte said there were a lot of people "running up and down . . . that alley" and there were guys "trying to get into her pants." Blancarte expressed surprise that Sanchez was alive after being out in the cold for two and a half days. He had left the area because he thought he would be blamed for Sanchez's condition as he was last seen with her. He changed his mind and turned himself in because he was too old to be "running."

VI.

While in a Holding Cell, Blancarte Makes Incriminating Statements.

On April 8, 2011, Blancarte was in a holding cell waiting to be transported. He was agitated and yelling. Riverside County Deputy Sheriff Caleb Hall approached Blancarte and told him to be quiet. Without prompting, Blancarte said he had taken a girl to get her drunk in order to have sexual intercourse with her. When she rebuffed him, he became very angry, gave her black eyes, stripped her naked, tied her wrists, gagged her, and left her for dead. Blancarte was surprised that Sanchez was still alive.

Riverside County Deputy Sheriff Jeremiah Foster overheard Blancarte's statements and prepared a report. Foster heard Blancarte say he got Sanchez drunk so that she would have sex with him. Blancarte took Sanchez to an alley with bushes, where they began to engage in sexual intercourse. Blancarte said that when "she was almost there," she no longer wanted to have sex. He said he did not "play that way," gave her two black eyes, hog-tied her, stripped and gagged her, threw her on the ground, and left her for dead. Blancarte said he was "[s]urprised she lived till Monday, naked in the cold." Foster heard Blancarte say his defense would be that "everyone knows [Sanchez] will drop her panties and show her tits for a beer." At the time, neither Hall nor Foster knew anything about Blancarte's case.

DISCUSSION

I.

Any Error in Admitting Evidence of the April 6 Interview Was Harmless Beyond a Reasonable Doubt.

Before trial, Blancarte sought to exclude evidence of his statements made during the April 6 interview on the ground he had invoked his right to counsel at that interview after his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*) were read to him. The trial court concluded that Blancarte did not make an unambiguous or unequivocal invocation of his right to counsel and held the evidence of the April 6 interview was admissible. A recording of the April 6 interview was played for the jury, which was provided with transcripts. DVD's of the April 6 interview were admitted in evidence as exhibits Nos. 110(1) and 110(2), and a transcript of the April 6 interview was admitted as exhibit No. 110A. Blancarte argues the trial court erred and violated his constitutional rights by admitting that evidence.

A. *Background*

The April 6 interview was conducted by Riverside County Sheriff's Investigators Lane and Bonaime. At the beginning of the interview, the investigators introduced themselves and Lane asked Blancarte if he would "mind talking with [them]." Blancarte responded: "I just—I wanna see what—what you got to say. You know, I just wanna see what you guys have to say." Lane told Blancarte, "it's kind of a give and take thing" and "we're here to talk to you."

Lane then read Blancarte his rights under *Miranda*. The following exchange occurred:

"LANE: Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him [be] present with you while you are being questioned.

"BLANCARTE: Okay.

"LANE: If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.

"BLANCARTE: *Yes, I would like that. I would like that.*

"LANE: Okay. Well, oh okay so you understand the rights?

"BLANCARTE: Mm-hm.

"LANE: And having those rights in mind, do you wanna talk to us now?" (Italics added.)

Without any prompting, Blancarte then talked nonstop for about 50 minutes. When he had finished, Lane returned to the subject of Blancarte's rights. This exchange occurred:

"LANE: Um, but for me to be able to help you and to answer any questions that we have that we could clear up, um, I need you to, um, say that you're willing to talk to me, um, as far as your Miranda rights go.

"BLANCARTE: Okay.

"LANE: . . . [S]o you know the little card that I pulled out and I asked you[?]

"BLANCARTE: Yes.

"LANE: . . . [T]he questions [I] asked you . . . .

"BLANCARTE: Mm-hm.

"LANE: . . . [U]nderstood all the rights that I read to you?

"BLANCARTE: Uh-huh.

"LANE: . . . [I]f you're willing to waive those rights and talk to me, . . . [be]cause I—I can't ask you any questions . . . [¶] . . . [¶] . . . specifically related to Mary . . . .

"BLANCARTE: What do you mean by that?

"LANE: Well, . . . unless you agree to talk to me and allow me to ask you questions so that we can get this cleared up and . . . . [¶] . . . [¶]

"BLANCARTE: And so—okay so—so go ahead. Tell me.

"LANE: . . . [A]re you willing to waive your rights and talk to me? I—I need you to answer . . . basically yes or no. Otherwise, I can't . . . get this cleared up.

"BLANCARTE: Well, what would be the best thing for me to do then?

"LANE: . . . I can't answer that. Only you can. But I know you told me you love Mary. . . . [¶] . . . [¶] . . . [B]ut we can't help you or Mary . . . till we talk about it and get to the truth.

"BLANCARTE: Okay.

"LANE: That's all we're looking for . . . [¶] . . . [¶] . . . is the truth.

"BLANCARTE: Um, okay well, I tell you what . . . . [¶] . . . [¶] . . . I'll—I'll talk to you." (Some ellipses added.)

If, after receiving *Miranda* warnings, a suspect invokes his or her right to counsel, then police questioning must cease and the suspect is not subject to further questioning until a lawyer has been made available or the suspect reinitiates conversation.

(*Davis v. United States* (1994) 512 U.S. 452, 458; *Smith v. Illinois* (1984) 469 U.S. 91, 94-95.) The suspect must unambiguously request counsel. (*Davis v. United States*, *supra*, at p. 459.)

Blancarte argues his statement, "Yes, I would like that. I would like that," constituted an unambiguous and unequivocal request for counsel. He relies primarily on *Smith v. Illinois*, *supra*, 469 U.S. at page 93, in which the defendant replied, "'*Uh yeah. I'd like to do that*,'" in response to being read his right to counsel. The United States Supreme Court held the defendant made an unambiguous and unequivocal request for right to counsel and postrequest responses to further questioning cannot be used to cast retrospective doubt on the clarity of the initial request. (*Id*. at pp. 96-97, 100.)

B. *Any Error Was Harmless Beyond a Reasonable Doubt.*

We need not decide whether Blancarte made an unambiguous and unequivocal invocation of his right to counsel because any error in admitting the DVD's and transcript of the April 6 interview was harmless beyond a reasonable doubt. When evidence obtained in violation of a defendant's rights under *Miranda* is admitted in evidence at trial, we review the record to determine whether the error was harmless under the beyond a reasonable doubt standard of *Chapman v. California* (1967) 386 U.S. 18 (*Chapman*). (*Arizona v. Fulminante* (1991) 499 U.S. 279, 310; *People v. Thomas* (2011) 51 Cal.4th 449, 498.) Under the *Chapman* standard, error is harmless when it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." (*Chapman*, *supra*, at p. 24.) "'To say that an error did not contribute to the ensuing verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.'" (*People v. Neal* (2003) 31 Cal.4th 63, 86.)

In assessing prejudice here, a critical point is that this is not a case involving a wrongfully obtained confession. In the April 6 interview, Blancarte did not

confess to killing Sanchez. He said he had struck Sanchez, giving her two black eyes, but steadfastly denied beating her, tying her up, and leaving her for dead.

Blancarte argues admission of the DVD's and transcript of the April 6 interview was prejudicial because during the April 6 interview, he made incriminating statements placing him with Sanchez at about the time the crimes occurred and establishing he committed violent acts against her.

But admission of the DVD's and transcript of the April 6 interview was harmless beyond a reasonable doubt because Blancarte's statements were cumulative of other, stronger evidence of guilt. (*People v. Thomas*, *supra*, 51 Cal.4th at p. 498.) Most significantly, Blancarte's DNA was present under Sanchez's fingernails (consistent with Sanchez scratching Blancarte) and on Sanchez's shoelaces used to tie her wrists. Also, Rodriguez testified he saw Blancarte and Sanchez together at a bus stop on the morning of April 2, 2011 and that Blancarte showed up alone at Rodriguez's house that night with scratches on his face and some blood on his shirt and jacket.

Nieblas testified Blancarte had scratches on his face and a bite mark on his arm, looked terrible, and said he "did something bad" and was "in trouble." Blancarte voluntarily surrendered to a police officer in Modesto and, on the drive to the jail, said he did a very bad thing, wanted to go to a state mental hospital "to get his head fixed," and talked about having beat up his girlfriend. During jail intake, Blancarte said he had fled Riverside County after assaulting his girlfriend. This evidence not only placed Blancarte with Sanchez at the time in question, but was consistent with the claim by Blancarte that he and Sanchez got into a fight after she refused to have sex with him.

In addition, evidence was presented that Blancarte confessed to tying up Sanchez and leaving her for dead. Hall and Foster heard Blancarte say that he gave Sanchez two black eyes, hog-tied her, stripped and gagged her, and left her for dead. Foster wrote a report on Blancarte's statements on the same day they were made. Evidence was presented that Blancarte was sexually interested in Sanchez and had

threatened to kill her. Rodriguez testified that Blancarte was skilled at tying knots that were difficult to loosen or untie.

In light of the very strong evidence of guilt, we conclude beyond a reasonable doubt that any error in admitting the DVD's and transcript of the April 6 interview did not contribute to the verdict.

II.

The Trial Court Did Not Err by Permitting Testimony About Prior Uncharged Acts of Violence, and Any Error Was Harmless.

Blancarte argues the trial court erred by permitting Dorothy Rodriguez[1] to testify about his treatment of her. Over Blancarte's objection, the trial court ruled the evidence was admissible under Evidence Code section 1101, subdivision (b) (section 1101(b)),[2] as being relevant to intent, motive, and common plan or scheme, and under Evidence Code section 1109, subdivision (a)(1) (section 1109(a)(1)), as being relevant to propensity.[3] The trial court concluded the evidence was not made

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[1] We refer to Dorothy Rodriguez as Dorothy to avoid confusion and because the parties refer to her by first name only. We intend no disrespect. In his appellate briefs, Blancarte refers to Dorothy as his ex-wife; however, it is not clear from the record whether they were ever married.

[2] The relevant text of Evidence Code section 1101, subdivision (a) and section 1101(b) is "(a) Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion. [¶] (b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act."

[3] Section 1109(a)(1) states: "(1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made

inadmissible by Evidence Code section 352. The trial court instructed the jury in accordance to section 1101(b) and section 1109(a)(1).

A. *The Testimony Was Relevant To Prove Intent.*

Under section 1101(b), evidence of uncharged crimes is admissible to prove, among other things, "'the identity of the perpetrator of the charged crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes.'" (*People v. Foster* (2010) 50 Cal.4th 1301, 1328.) "'Evidence of uncharged crimes is admissible to prove identity, common design or plan, or intent only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity, common design or plan, or intent.'" (*Ibid.*) To prove intent, the uncharged conduct need only be sufficiently similar to the charged conduct to support the inference that the defendant probably had the same intent in each case. (*Ibid.*) If evidence of prior conduct is relevant to prove the defendant's intent, common plan, or identity, the trial court must consider whether to exclude the evidence under Evidence Code section 352. (*People v. Foster*, *supra*, at p. 1328.)

The trial court's rulings under Evidence Code sections 1101 and 352 are reviewed under the abuse of discretion standard. (*People v. Rogers* (2013) 57 Cal.4th 296, 326.) Under the abuse of discretion standard, reversal is required only when the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner resulting in a miscarriage of justice. (*Ibid.*)

Dorothy testified that she was with Blancarte on and off for about six years and their relationship ended in December 2009. According to Dorothy, whenever Blancarte drank, which was every day, he would slap and punch her and pull her hair for no reason. Blancarte struck Dorothy hard, leaving bruises, cuts, and bumps on her body. He had at times choked her, shoved her into a refrigerator, and whipped her with an

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inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352."

extension cord. In December 2009, Blancarte, who had been drinking, started punching Dorothy with closed fists for two to three minutes for no reason. She then ended the relationship.

Dorothy's testimony was relevant to prove intent to commit battery. Blancarte was charged with, among other things, attempted rape, of which battery is a lesser included offense. Blancarte requested a jury instruction on self-defense (CALCRIM No. 3470) as a defense to battery. The trial court gave the self-defense instruction. In closing argument, Blancarte's counsel argued Blancarte had struck Sanchez in self-defense: "Whether it was in self-defense or it was not will be a decision for you to make when you're considering the lesser in Count 2, which is battery . . . . If it's not an attempted rape, it can still be a battery based on the conduct between them. And you'll have to decide if that's self-defense, it's not self-defense, because he hit her more times than she hit him, et cetera, you'll decide all of that."

Dorothy's testimony showed that Blancarte drank and violently attacked women, sometimes for no reason. Thus, when Blancarte struck Sanchez, he was not acting in self-defense but intended to attack her, as he had attacked Dorothy. Although the uncharged crimes committed against Dorothy and the charged crimes committed against Sanchez were not identical, they were sufficiently similar to support the inference that Blancarte had the same intent in all instances.

Blancarte argues intent was not an issue at trial because "[t]here was not much doubt that whoever inflicted these injuries and bound Sanchez acted deliberately and sadistically, given the nature of the conduct." In support of his argument, he relies on *People v Balcom* (1994) 7 Cal.4th 414. In that case, the victim testified the defendant placed a gun to her head and forced her to engage in sexual intercourse, but the defendant denied using a gun or force but claimed the victim had voluntarily consented. (*Id.* at p. 422.) The California Supreme Court held that evidence of the defendant's uncharged offenses was inadmissible to prove intent because intent was not at issue under either

version of the facts presented. The court explained: "These wholly divergent accounts create no middle ground from which the jury could conclude that defendant committed the proscribed act of engaging in sexual intercourse with the victim against her will by holding a gun to her head, but lacked criminal intent because, for example, he honestly and reasonably, but mistakenly, believed she voluntarily had consented. [Citation.] On the evidence presented, the primary issue for the jury to determine was whether defendant forced the complaining witness to engage in sexual intercourse by placing a gun to her head. No reasonable juror considering this evidence could have concluded that defendant committed the acts alleged by the complaining witness, but lacked the requisite intent to commit rape." (*Ibid.*)

This case differs from *People v. Balcom* in that the evidence and theories presented at trial did leave a middle ground in which intent was relevant. Here, the jury could have found that Blancarte did not tie up Sanchez and leave her for dead and believed his account (presented in the April 6 interview) that they fought after she decided not to engage in sexual intercourse with him. In that situation, the jury still would have to consider the attempted rape charge and the lesser included offense of battery, to which Blancarte claimed self-defense.

Because Dorothy's testimony was relevant to prove intent, we consider whether the trial court abused its discretion in determining not to exclude Dorothy's testimony under Evidence Code section 352, which provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." "[P]rejudice" in section 352 means evidence uniquely tending to evoke an emotional bias against the defendant individually and having very little effect on the issues. (*People v. Lopez* (2013) 56 Cal.4th 1028, 1059, disapproved on another ground in *People v. Rangel* (2016) 62 Cal.4th 1192, 1215-1216.)

Dorothy's testimony was not unduly prejudicial within the meaning of Evidence Code section 352. Dorothy's testimony was brief. Although Dorothy testified that Blancarte committed some horrible acts against her, "[t]he testimony describing [Blancarte]'s uncharged acts . . . was no stronger and no more inflammatory than the testimony concerning the charged offenses." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 405; see *People v. Jones* (2011) 51 Cal.4th 346, 371 ["The [charged] robbery was not particularly inflammatory when compared with the horrendous facts of the charged crimes."].) The probative value of Dorothy's testimony was not substantially outweighed by any undue prejudice. The trial court did not abuse its discretion under section 352 by permitting Dorothy to testify about uncharged acts of violence committed by Blancarte.

B. *Any Error Was Harmless.*

Any error in permitting Dorothy to testify was harmless. We apply the standard of *People v. Watson* (1956) 46 Cal.2d 818, 836-837 (*Watson*) to determine whether error in admitting uncharged crimes evidence under Evidence Code section 1101 was harmless. (*People v. Lopez* (2011) 198 Cal.App.4th 698, 716.) Error under Evidence Code section 352 likewise is evaluated under the *Watson* standard. (*People v. Earp* (1999) 20 Cal.4th 826, 878.) Under the *Watson* standard, "[t]he reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439.)

The evidence of Blancarte's guilt was very strong and included DNA evidence and an unprompted confession. The evidence of guilt was so strong that we have concluded beyond a reasonable doubt that any error in admitting the DVD's and transcript of the April 6 interview did not contribute to the verdict. In addition, the trial court instructed the jury to consider Dorothy's testimony only for the limited purpose for which it was offered. It was not reasonably probable the verdict would have been more favorable to Blancarte if the trial court had excluded Dorothy's testimony.

III.

There Was No Cumulative Error.

Blancarte asserts cumulative error. "[A] series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error." (*People v. Hill* (1998) 17 Cal.4th 800, 844.)

We have not found error. We concluded any error in admitting evidence of the April 6 interview was harmless and the trial court did not err by permitting Dorothy to testify about Blancarte's uncharged acts of violence against her. But for purposes of addressing Blancarte's claim of cumulative error, we will assume the trial court erred in both instances.

"Under the 'cumulative error' doctrine, we reverse the judgment if there is a 'reasonable possibility' that the jury would have reached a result more favorable to the defendant absent a combination of errors." (*People v. Jandres* (2014) 226 Cal.App.4th 340, 361.) In light of the strong evidence of guilt, we conclude there was no reasonable possibility the jury would have reached a result more favorable to Blancarte if the trial court had excluded both evidence of the April 6 interview and Dorothy's testimony. The cumulative effect of the asserted errors does not warrant reversal. (*People v. Jablonski* (2006) 37 Cal.4th 774, 837.)

IV.

The Trial Court Did Not Err by Denying Blancarte's *Pitchess* Motion.

Blancarte filed a motion under *Pitchess*, *supra*, 11 Cal.3d 531, for discovery of the personnel records of Hall and Foster. The trial court conducted an in camera review of the records and found nothing was discoverable. The records that were reviewed and the transcript of the proceedings were ordered sealed. Blancarte has

requested that we review the sealed records and transcript. The Attorney General has no objection to our doing so.

The trial court's decision not to release personnel records is reviewed under the abuse of discretion standard. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228.) The sealed personnel records and the transcript of the in camera proceedings do not contain anything even remotely discoverable. The trial court therefore did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.